

AO 241 (Rev. 09/17)

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

<b>United States District Court</b>		District: <b>Massachusetts</b>
Name (under which you were convicted): <b>Fagbemi Miranda</b>		Docket or Case No.:
Place of Confinement : <b>Old Colony Correctional Center, Bridgewater, MA</b>		Prisoner No.: <b>W102748</b>
Petitioner (include the name under which you were convicted) <b>Fagbemi Miranda</b>		Respondent (authorized person having custody of petitioner) <b>Stephen Kennedy, Superintendent, Old Colony Correctional Center</b>
The Attorney General of the State of: <b>Massachusetts</b>		

**PETITION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Bristol County Superior Court, Fall River, MA

(b) Criminal docket or case number (if you know): BRCR2008-00325

2. (a) Date of the judgment of conviction (if you know): 6/5/2013

(b) Date of sentencing: 6/5/2013

3. Length of sentence: Life without parole

4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case:

First degree murder

Assault and battery with a dangerous weapon

Possession of a firearm without a firearm identification card

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)  
☐ (2) Guilty ☐ (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☒ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Supreme Judicial Court, Boston, MA

(b) Docket or case number (if you know): SJC-11690

(c) Result: Conviction affirmed; denial of motion for new trial affirmed

(d) Date of result (if you know): 6/9/2020

(e) Citation to the case (if you know): 484 Mass. 799, 146 N.E.3d 435 (2020)

(f) Grounds raised: (1) violation of the Petitioner's 5th, 6th, and 14th amendment rights (and rights under state law) to make fundamental decisions (client autonomy), to testify, to counsel/effective assistance

of counsel, and to due process of law; (2) violation of the Petitioner's 14th amendment right to due

process of law (and right under state law) to an instruction on self-defense and other instructions;

(3) violation of the Petitioner's 5th amendment rights under Miranda v. Arizona, 384 U.S. 436 (1966);

(4) impairment of the integrity of the grand jury proceedings; and

(5) justification for a new trial or reduction in verdict under Mass. G.L. c. 278, s. 33E

(g) Did you seek further review by a higher state court? ☐ Yes ☐ No (Not applicable)

If yes, answer the following:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Result: \_\_\_\_\_

\_\_\_\_\_

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(4) Date of result (if you know): \_\_\_\_\_

(5) Citation to the case (if you know): \_\_\_\_\_

(6) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

(h) Did you file a petition for certiorari in the United States Supreme Court? ☒ Yes ☐ No

If yes, answer the following:

(1) Docket or case number (if you know): 20-5708(2) Result: Denied(3) Date of result (if you know): 11/2/2020(4) Citation to the case (if you know): 141 S. Ct. 683 (2020)

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Bristol County Superior Court, Fall River, MA(2) Docket or case number (if you know): BRCR2008-00325(3) Date of filing (if you know): 1/30/2017(4) Nature of the proceeding: Motion for new trial; motion for discovery

(5) Grounds raised: \_\_\_\_\_

(1) and (2) above, plus ineffective assistance of counsel in failing to move for a continuanceor a change of venue and failing to challenge the racial makeup of the jury; discoverysought in support of ineffective assistance of counsel claims

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No(7) Result: Motions denied

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(8) Date of result (if you know): 8/20/2018

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No(2) Second petition: ☐ Yes ☐ No(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

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12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**

**GROUND ONE:** Violation of the Petitioner's 5th, 6th, and 14th amendment rights to make fundamental decisions (client autonomy), to testify, to counsel/effective assistance of counsel, and to due process of law

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See attachment re: ground one and supporting facts

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(b) If you did not exhaust your state remedies on Ground One, explain why:

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**(c) Direct Appeal of Ground One:**(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for new trialName and location of the court where the motion or petition was filed: Bristol County Superior Court,  
Fall River, MADocket or case number (if you know): BRCR2008-00325Date of the court's decision: 8/20/2018Result (attach a copy of the court's opinion or order, if available): Motion for new trial denied  
\_\_\_\_\_  
\_\_\_\_\_(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Judicial Court, Boston, MA  
\_\_\_\_\_  
\_\_\_\_\_Docket or case number (if you know): SJC-11690 (consolidated with direct appeal)Date of the court's decision: 6/9/2020Result (attach a copy of the court's opinion or order, if available): Denial of motion for new trial affirmed  
\_\_\_\_\_  
\_\_\_\_\_(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: \_\_\_\_\_

**GROUND TWO:** Violation of the Petitioner's 14th amendment right to due process of law because of the refusal to charge the jury on self-defense (and the failure to charge on related defenses)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See attachment re: ground two and supporting facts

(b) If you did not exhaust your state remedies on Ground Two, explain why: \_\_\_\_\_

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for new trial

Name and location of the court where the motion or petition was filed: Bristol County Superior Court,  
Fall River, MA

Docket or case number (if you know): BRCR2008-00325

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Date of the court's decision: 8/20/2018Result (attach a copy of the court's opinion or order, if available): Motion for new trial denied(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Judicial Court, Boston, MADocket or case number (if you know): SJC-11690 (consolidated with direct appeal)Date of the court's decision: 6/9/2020Result (attach a copy of the court's opinion or order, if available): Denial of motion for new trial affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two :

**GROUND THREE:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):



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(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

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(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

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\_\_\_\_\_

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: \_\_\_\_\_

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**GROUND FOUR:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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(b) If you did not exhaust your state remedies on Ground Four, explain why: \_\_\_\_\_

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(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

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(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

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Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: \_\_\_\_\_

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

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- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

No.

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14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

Petition for writ of certiorari in the United States Supreme Court

20-5708

Issue raised: Does the defendant's Sixth Amendment right to make fundamental decisions about his case include the right to choose which defense to present?

Petition denied, 11/2/2020

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15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: \_\_\_\_\_

(b) At arraignment and plea: John D. Moses (deceased)

(c) At trial: Frank D. Camera, 70 S. Main St., Fall River, MA 02721

(d) At sentencing: Frank D. Camera

(e) On appeal: Susan J. Baronoff, Baronoff Law Office, 1295 Beacon St. #67, Brookline, MA 02446

(f) In any post-conviction proceeding: Susan J. Baronoff

(g) On appeal from any ruling against you in a post-conviction proceeding: Susan J. Baronoff

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

The United States Supreme Court denied the Petitioner's petition for writ of certiorari on November 2, 2020. The judgment of conviction became final on that date and the one year limitations period began to run on that date. Gonzalez v. Thaler, 565 U.S. 134, 150 (2012). This petition for writ of habeas corpus is therefore timely as long as it is filed by November 2, 2021.

[illegible]

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: Issue writ; discharge him from custody

or any other relief to which petitioner may be entitled.

/s/ Susan J. Baronoff

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on \_\_\_\_\_ (month, date, year).  
Petition to be mailed to Attorney Baronoff for filing with the United States District Court

Executed (signed) on \_\_\_\_\_ (date).

/s/ Fagbemi Miranda

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.